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# FBI Law Enforcement

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# *Minor Drinkers/Major Consequences Enforcement Strategies for Underage Alcoholic Beverage Law Violators*

By BOBBY LITTLE, Ph.D., and MIKE BISHOP, M.S.

Photo © Mark Ide



Several sophisticated criminological research projects have confirmed empirically something that law enforcement practitioners have known for a long time: many officers simply do not make teenage alcohol use an enforcement priority. One study surveyed a sample of police personnel and found that many officers rate this type of enforcement activity among the lowest of police responsibilities.<sup>1</sup> A second study revealed that some of the reasons police

offered for assigning a low priority to this type of crime included perceived legal obstacles associated with processing juveniles and the unpleasant paperwork and special detention procedures required for minors. Officers also cited such reasons as a lack of juvenile detention facilities or inadequate space inside existing centers, the lack of significant punishment for teen alcohol use, and disagreement with some of the laws regulating underage drinking, especially the illegality of

alcohol consumption by adults ages 18 through 20.<sup>2</sup> Although some of these objections represent legitimate concerns, many valid reasons exist for making enforcement of underage alcohol use a higher priority. A factually based rationale for making alcohol violations a priority combined with proven strategies for deterring the illegal purchase, possession, and consumption of alcohol by minors stands the best chance of addressing this growing concern.

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## THE FACTUAL RATIONALE

Most adults remember taking their first drink at a young age; for some, getting drunk was a rite of passage. To these individuals, underage drinking is a harmless activity, a victimless crime. Yet, the fact remains: underage drinking can have devastating consequences and demands serious attention.

### Death and Destruction

More teens die in alcohol-related motor vehicle crashes than from any other cause.<sup>3</sup> Alcohol use also contributes to a significant proportion of other types of teenage deaths, such as drownings, suicides, and recreational fatalities.<sup>4</sup> Teenage alcoholism is alarmingly high in the United States and is associated with crimes ranging from petty larceny to homicide. The economic losses alone from alcohol-related property damage, lost productivity, and other detrimental consequences associated with alcohol abuse cost

society tens of billions of dollars per year.<sup>5</sup>

In addition to the death toll, property damage, and economic losses, tens of thousands of people are injured seriously in alcohol-related mishaps every year. These accidents occur on the job, around the home, and during social activities.

### Adverse Health Effects

Medical studies have documented the detrimental effects of alcohol on the human liver, stomach, pancreas, and other internal organs. Chronic alcohol abuse can lead to alcoholism, exacerbating the toll on the body. Young female alcoholics put their unborn children at risk for fetal alcohol syndrome.

### Public Demand for Police Attention

Finally, the public wants the police to address the problem of underage drinking. In many states, legislatures have passed or are

considering passing tougher laws associated with both adult drunk driving and alcohol use by minors. Examples include raising the legal drinking age, lowering the blood-alcohol content (BAC) for legally defined levels of intoxication, enacting stiffer penalties for drunk driving, suspending the driver's licenses of youths caught purchasing or possessing alcohol, and prohibiting licensed, juvenile drivers from operating motor vehicles during certain hours, such as midnight to 5 a.m.

In short, the loss of life, property damage, economic costs, and negative health effects associated with underage drinking, as well as public outcry for police attention, provide sufficient reasons to make the illegal use of alcohol by teens a greater concern among police agencies. To do so, law enforcement agencies can employ a number of tactics.

## INVESTIGATIVE STRATEGIES

### Undercover Stings

About 90 percent of high school students have tried alcohol, and approximately 60 percent of both high school and college students drink regularly. Forty percent of college students regularly "binge-drink," defined as consuming five or more drinks consecutively; 4 percent of students drink every day.<sup>6</sup>

Unfortunately, the ease with which underage drinkers can purchase alcohol represents a national problem.<sup>7</sup> In an effort to combat this problem, many police agencies supplement surveillance activities with sting operations, during which



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*Mr. Bishop serves as district supervisor for the Alabama Alcoholic Beverage Control Board Enforcement Division in Florence, Alabama.*

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a minor operative attempts to purchase alcohol from various licensed establishments, such as convenience stores, restaurants, and bars.

Agencies need to take precautions prior to such operations. The commander of the agency should interview and assess the suitability of minors prior to approving their use for paid employment or volunteer work. In some states, additional legal guidelines apply. In Alabama, for example, the minor's parent or guardian must sign a consent form and provide the law enforcement agency with a copy of the child's birth certificate, driver's license, and a recent photograph.<sup>8</sup> In addition, agency policies may require that personnel conducting a sting provide a supervisor with a proposed operational plan for approval prior to action. Further, the attempted purchase should be audio- or videotaped, and money used in the operation should be marked and retrieved whenever possible.<sup>9</sup> When the operative is used in an on-premise location, such as a restaurant, lounge, or club, an undercover officer or agent should take a position inside the establishment to observe the potential sale.

All law enforcement agencies using minor operatives should consider adopting such guidelines as standard operating procedure. Still, officers should contact the local prosecutor or judicial authority before using an operative. In some states, using minors as operatives may present the potential for legal challenge by the defense counsel or may not be legal at all.

Despite the inherent difficulties in using a minor operative, such sting operations have met with

success. When Alabama Alcoholic Beverage Control (ABC) officers initiated this technique, approximately 70 percent of the establishments sold alcohol to the underage operative. Following several years of making cases using this technique, the proportion of establishments selling to minor operatives dropped to about 25 percent.

**“...many officers simply do not make teenage alcohol use an enforcement priority.”**

#### **Cops ‘N Shops**

The Cops ‘N Shops program is popular with alcohol merchants in many states, and it produces some deterrent effect on youths trying to purchase alcoholic beverages. The purpose of the program is threefold: to curb the purchase of alcoholic beverages by minors, to assist retail licensees in their efforts to operate their establishments within legal guidelines, and to lower the number of minors who drink and drive. Cops ‘N Shops differs from undercover stings in that it focuses on the violator, rather than the alcoholic beverage retail industry. Individuals of legal drinking age who purchase alcohol to sell or give to minors represent a secondary target for this type of operation.

Traditionally, an agent or officer poses as an employee or a customer in a retail establishment,

waiting to arrest any minor attempting to purchase alcohol. Sometimes, illegal transactions take place in the parking lot between individuals who legally purchase the alcohol to give to minors waiting outside. Placing a backup officer outside nets these offenders.

Attempts to deter unlawful buyers include special signs to scare those contemplating the offense. These Cops ‘N Shops signs, placed at all entrances, notify everyone entering the store that agents may pose as employees and warn that any person violating the law will be prosecuted.<sup>10</sup> Though retailers are sometimes reluctant to participate in the program, Cops ‘N Shops has become a viable enforcement strategy in many states.

#### **Party Patrols**

Another enforcement strategy involves the use of party patrols. These patrols appear to be the easiest way to make a large number of arrests for underage drinking. Typically, informants at local high schools and universities tip off law enforcement to underage drinkers planning a party. Undercover operatives can attend such gatherings, or officers acting alone can surveil the location and make arrests. A weekend drunk driving and party patrol program in Oregon increased the arrest of minors for possession from 60 to 1,000 in 1 year.<sup>11</sup> There also was a corresponding decrease of 35 percent in underage and young adult automobile crashes. When not hunting teenage parties and citing underage drinkers, the officers operated sobriety checkpoints and conducted drunk driving enforcement patrols.<sup>12</sup>

## Walk-throughs

The walk-through is a method of observing activity inside alcoholic beverage retail outlets such as bars and restaurants. Officers may enter such public places either covertly, in plain clothes, or overtly, in uniform. The obvious advantage of covert entry is that it lets the officer observe alcohol violations without evoking the suspicion of customers or employees. This technique enables officers to spot violations by customers, including attempts to illegally purchase or consume alcoholic beverages or to provide alcohol to underage drinkers. Walk-throughs also allow officers to scrutinize bartenders and other employees who may be serving underage patrons.

In Alabama, the alcoholic beverage industry is considered heavily regulated, and as a result, law enforcement officers with proper jurisdiction may conduct administrative searches or inspections of licensed premises without search warrants. The law in other states may not condone an intensive search without a warrant, but it may allow a walk-through to look for violations. Officers should check with their local prosecutors before employing these techniques.

## Legislative Action

Certain legislative and policy actions may effectively deter teenage alcohol use and reduce the number of alcohol-related crashes among young drivers. Many states have lowered the legally acceptable levels of blood-alcohol content for drivers under 21. In Alabama, for example, a youth under age 21

caught operating a motor vehicle with .02 BAC or above is charged with driving under the influence.<sup>13</sup> Two other legislative proposals include laws prohibiting driving by young, novice drivers between certain times, especially midnight to 5 a.m., and a 90-day license suspension for youths convicted of possessing alcoholic beverages or using a false driver's license to purchase alcohol.<sup>14</sup>

**“ Many states have lowered the legally acceptable levels of blood-alcohol content for drivers under 21. ”**

## CONCLUSION

Simply put, underage drinking is against the law. Yet, in a culture that views alcohol consumption as a part of growing up, even those tasked with enforcing the law may overlook violations. The many consequences of irresponsible drinking, by youths and adults alike, demand action.

During a time of increasing attention to other drugs of abuse, such as marijuana and cocaine, police administrators who must operate with limited financial resources may have difficulty allocating the necessary staff to combat the underage drinking problem. Yet, with help from policy makers, retailers,

and the public, agencies can implement innovative enforcement strategies to curb underage drinking. ♦

## Endnotes

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<sup>7</sup> Surgeon General C. Everett Coop, cited in *Safety Recommendation to the Governor of Alabama*, National Transportation Safety Board, March 11, 1994, 4.

<sup>8</sup> *Jean & Frank Bartlett, DBA Package Palace v. Alabama Alcoholic Beverage Control Board, et al.*, Supreme Court of Alabama, October term, 1992-1993, case no. 1910325.

<sup>9</sup> Director of Enforcement, Alabama ABC Board, internal memorandum, April 7, 1995.

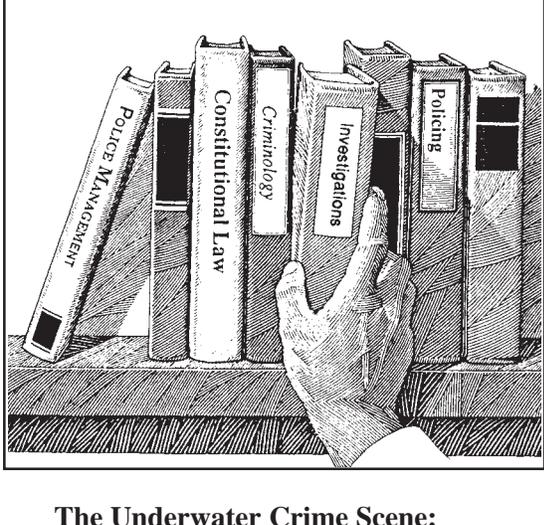
<sup>10</sup> Director of Enforcement, Alabama ABC Board, internal memorandum, September 1991.

<sup>11</sup> Thomas Radecki, “How to Best Enforce the Legal Drinking Age,” *Operation Straight ID Symposium*, panel discussion, Hillside, Illinois, May 30-31, 1995.

<sup>12</sup> *Ibid.*

<sup>13</sup> Title 32-5A-191(b), Code of Alabama, 1996.

<sup>14</sup> Title 28-3A-25(b)(2), Code of Alabama, 1995.



**The Underwater Crime Scene:**  
**Underwater Crime Investigative Techniques**  
by Ronald F. Becker, published by  
Charles C. Thomas, Springfield, Illinois, 1995.

Most research concerning crime scene investigation focuses primarily on land procedures. Considering the fact that more than 70 percent of the earth's surface is water, understanding proper underwater investigation techniques is critical for a successful operation.

The author, a dive team specialist, lawyer, police investigator, and instructor of criminal investigation and forensic science, thoroughly establishes the need for effective underwater investigations by illustrating the recovery of underwater evidence in several disciplines, including field and marine archaeology, criminalistics, and forensic science. His examples include boat arsons, homicides, suicides, drownings, vehicle entombment, vessel and air crashes, abandoned contraband, weapons and vehicles, recovery and reconstruction of vessels and cargo, and recovery of artifacts from sunken cities.

The author's format is understandable and informative. He uses historical facts, examples, and sketches to address a variety of topics. These include legal liability, information gathering, team building, search methods, temporal and geographical plotting of evidence, underwater excavation, evidence handling, medicolegal aspects of underwater death, and courtroom presentation. Bold subheadings in each section make information easy to locate.

The book's final chapter highlights future trends in underwater investigation. Topics include technology, recovery teams, training and education, university and college responsibility, and agency needs.

Although the book is geared toward the experienced diver, many novice and nondivers will find *The Underwater Crime Scene* useful. The author describes underwater investigative procedures familiar to land investigators, such as protecting the crime scene, interviewing witnesses, and maintaining a proper chain of custody. In many chapters, checklist summaries provide a practical guide for those utilizing underwater, as well as land, investigative techniques.

*The Underwater Crime Scene* serves as a practical guide for law enforcement and fire/rescue divers and supervisors, as well as for educators in underwater investigation. The author presents his discussions clearly and offers critical life-saving, evidence recovery, and crime scene techniques not found in other investigation texts.

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# Focus on Communications

## Mobile Data Access Increases Officer Efficiency

By Kenneth B. Marshall



Photo © Tribute

**I**magine a police department where all but emergency radio traffic is restricted due to a pursuit in one area of the city. Yet, a patrol officer on the other side of town still can make routine inquiries for vehicle registration or wanted person information. Although many departments may consider this scenario impossible, it is not. Officers can make inquiries quickly and conveniently before radio traffic resumes to normal and without burdening a dispatcher with routine requests. Officers can make such inquiries from an in-car data access terminal, a special computer installed directly in the patrol car.

There is safety in knowledge for any law enforcement officer. In-car data access provides an important new tool for law enforcement and an invaluable asset for officer safety. In fact, the Ohio State Highway Patrol discovered in a recent study that law enforcement officers with in-car data access technology made more than 8 times the information inquiries on driver's records, vehicle registrations, wanted persons, and property files per 8-hour shift than officers without in-car computers. This study offers some of

the first quantifiable results documenting the increased officer efficiency associated with using in-car computers for accessing information.

### THE FOUNDATION

All states have a computerized information system and network established for criminal justice agencies to access information from that state. Such systems also provide a link to national files, as well as those files from other states. Information stored in these systems commonly includes motor vehicle data, as well as wanted person and stolen property file information. Additionally, the systems respond to inquiries with "alerts" that indicate any outstanding arrest warrants or pertinent criminal information about the vehicle's registered owner. Ohio's statewide system, the Law Enforcement Automated Data System (LEADS), provided the data that officers accessed during the research project.

The technology used during this project is called cellular digital packet data (CDPD) and uses digital cellular networks already in place. CDPD uses the idle voice channels on an existing digital cellular network to reliably transmit and receive mobile data traffic. CDPD technology offers law enforcement agencies an alternative method for in-car data access without the need to redesign a department's entire radio system.

In addition, the system presents a method for in-car data access to small departments without the expense associated with installing an alternate network. Large agencies also can realize benefits through CDPD because the technology allows administrators the flexibility to choose the officers using the in-car data access capability and minimizes system operating expenses. Additionally, the system eliminates radio traffic because it is networked and allows communication from base to car or between cars. This capability enables administrators to specifically design enforcement strategies and programs involving officers equipped with the system. For example, officers could conduct covert operations with less danger of the subjects becoming aware of their activities, which can happen when offenders use police scanners to intercept radio traffic.

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## THE STUDY

Initially, a local cellular provider approached the Ohio State Highway Patrol proposing a project to study the concept and effectiveness of in-car data access, using CDPD technology, for law enforcement officers. In addition to the local cellular providers, the project involved a cooperative effort between the Ohio State Highway Patrol, a local computer software company, and six Ohio law enforcement agencies. The participating businesses donated all of the equipment necessary for this study. The six law enforcement agencies represented an aggregate grouping of the Ohio LEADS community.

Two police cars from each of the six participating law enforcement agencies were equipped with CDPD technology for use during the research project. Each in-car CDPD system included a laptop computer, a conventional or CDPD modem, and an externally mounted antenna. A desktop computer at each department worked as a server, or base station, and connected directly to the LEADS mainframe computer.

Several officers from each agency tested the CDPD system during the course of the research project. As required by the state, these officers had been LEADS-certified by the state of Ohio and had completed a training session on the operation of the CDPD system. At the conclusion of this training session, these officers began using the CDPD-LEADS system during their normal patrolling duties. This group served as the test group during the research project.

The research component of the CDPD-LEADS project involved evaluating officer efficiency and effectiveness by comparing the LEADS inquiries and hits for those officers using the CDPD-LEADS system (test group) to those without the system (control group). Analysts from the Ohio State Highway Patrol tallied the LEADS inquiries and hits for both the test group and the control group as part of this evaluation process. This information, gathered

over 10 data collection days during the course of the 3-month research project, served as a statistical sample for the study.

Analysts from the Ohio State Highway Patrol then categorized the types of LEADS inquiries and hits for both the test and control groups into four classifications for each 24-hour period of the 10 data collection days. The four classifications, based on the LEADS file queried, encompassed vehicle registration, operator's licenses, articles, and wanted/warrant inquiries. The analysts then entered information into a computer spreadsheet program to generate the totals and analyze the results.

**“**  
**...officers with in-car data access made 8 times as many inquiries to the system....**  
**”**

## THE RESULTS

At the conclusion of the 10 days, the Ohio State Highway Patrol's research and development unit distributed final project evaluation forms to all officers involved in testing the CDPD-LEADS system. Additionally, officers from all of the agencies discussed their comments regarding the system.

The following statistics from the research project reflect the success of in-car LEADS access for law enforcement officers:

- Based on information from the 10 data sampling days, officers in the test group made 17.12 percent more inquiries than those in the control group, despite working 8,604 fewer hours
- Throughout the 3-month duration of the project, 37 test-group officers made a total of 41,816 inquiries and generated a total of 805 alerts
- Officers in the test group made more than 8 times as many LEADS inquiries per 8-hour shift than officers in the control group
- Over the 10 data sampling days, officers in the test group generated a LEADS alert for every 17.18 hours worked, compared to the officers in the control group, who generated a LEADS alert for every 99.4 hours worked

### Results from a Sample Comparing In-car Data Access to Traditional Data Access

	With CDPD	Without CDPD
Total LEADS inquiries	6,681	5,704
Total LEADS hits	72	99
Total Officer hours worked	1,237	9,841
Average LEADS inquiries per officer per 8-hour shift	43.2	4.64
Average hours worked per LEADS hit	17.18	99.4

- Officers in the test group averaged 18.94 more arrests/citations per month than officers in the control group.

In addition to the statistics this research project produced, it also revealed several intangible benefits. The majority of law enforcement officers involved in the project believe that officer safety increases as the amount of information available to the officer increases. They said that prior knowledge regarding the registered owner and vehicle during a traffic stop represented a primary benefit of an in-car data access system.

Additionally, the ability for officers to conduct many of their own LEADS inquiries during the research project reduced the overall amount of radio communication within a given agency. This reduction may prove especially important for large agencies that dispatch not only for themselves but for multiple departments.

Furthermore, citation and violator information available on the in-car computer terminal eliminated the need to repeat the information over the radio and made it more accessible to officers. An officer could make any number of registration inquiries without burdening the dispatcher. The CDPD-LEADS system allowed officers to continue to conduct inquiries regardless of the status of the radio traffic or

dispatchers. This allowed the officers to query license plates they may not have ordinarily requested, resulting in more significant LEADS hits.

Additionally, because officers using the CDPD-LEADS system did not rely on dispatchers for the inquiry responses, the officers received the same information in a more timely manner. Typically, LEADS information became available to officers using the CDPD-LEADS system in about 5-10 seconds, thus allowing officers to make more LEADS inquiries in a shorter amount of time.

The CDPD-LEADS system also acted as a morale booster for many officers. Officers in the test group said they became more aware of their surroundings because of the constant ability to make inquiries on vehicles while on duty. Many officers said they enjoyed going on patrol each day and that the CDPD-LEADS system helped break up the monotony sometimes common with working the same areas each day. Officers frequently would arrive early for their assigned shifts just to ensure that they received one of the CDPD-LEADS equipped cars.

Finally, many officers with CDPD-LEADS access believed they could make more quality arrests than without CDPD-LEADS access. For example, one officer got an alert while querying random vehicle registrations at a local restaurant. The alert identified the owner of the vehicle as having a record of a

previous homicide and resisting arrest. The alert also warned the officer of active warrants for domestic violence in two Ohio counties. The officer radioed for backup units, positively identified the suspect, and subsequently took him into custody without incident. A passenger in the vehicle had active warrants and also was arrested.

**CONCLUSION**

In-car data access keeps officers in touch with headquarters and one another, while providing them with mission-critical law enforcement information. The Ohio State Highway Patrol's study revealed that officers with in-car data access made 8 times as many inquiries to the system, retrieved more hits, and made

more arrests for more serious offenses than officers who had to go through the dispatcher for information. Moreover, officers provided with timely and accurate information on the potential dangers they face can better serve their communities and, as important, protect themselves.

Indeed, public safety and the safety of law enforcement officers remain concerns for all departments. In-car data access provides officers with a valuable tool needed to achieve these important goals. ♦

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*Colonel Marshall serves as superintendent of the Ohio State Highway Patrol in Columbus, Ohio.*

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## ***Surreptitious Audio Surveillance*** ***The Unknown Danger to Law Enforcement***

By CHARLES W. O'NEAL, M.A.

**I**magine the perfect textbook execution of a search warrant at the primary location used by a major drug ring. The police have taken all of the necessary precautions, including instructing the alarm company to disregard any signals it receives from the site. However, upon entering, the officers unknowingly trigger a second alarm system installed by the suspects themselves using parts ordered by mail and instructions from the Internet. Investigators find the usual items associated with such a case—money-counting machines,

traces of controlled substances, pagers, firearms, etc., along with a number of computers. A document named in the warrant provides investigators with information on the immediate whereabouts of numerous high-profile drug distributors. Arrest teams are dispatched to the various locations in the city; however, all report the same unusual event—the suspects apparently had fled minutes before the teams had arrived.

What had happened? No one except the officers involved knew the arrests were imminent. To com-

municate among themselves, the officers used only encrypted radio transmissions. Prior to the execution of the warrant, not even the police had known the location of the arrest sites; the suspects should have felt safe. The authorities could offer no explanation. Is it possible that the suspects had used computers to surreptitiously eavesdrop on the officers during the execution of the warrant? It is not only possible but also extremely likely.

Amazingly powerful, low-cost computer systems that only a few short years ago would have been

unthinkable now are readily available. Such computers are sold at mass-market outlets in virtually every American community. In the hands of criminals, however, these inexpensive, easily obtained computers can be used as effective, remote-controlled surreptitious audio surveillance devices.<sup>1</sup>

Compounding such a truly disturbing situation is the fact that law enforcement remains generally unaware of this newly discovered threat. However, by understanding the manner in which criminals easily can construct and employ remote-controlled surreptitious audio surveillance devices, law enforcement officers can take steps to avoid being exploited by such criminal activity.

### **WHAT EQUIPMENT DOES IT REQUIRE?**

Little or no technical expertise is needed to convert a readily available computer equipped with sound capability, a modem, and the appropriate software into a device that will allow the surreptitious interception of any audio generated within its proximity. After the computer captures the intercepted audio, it can transmit the conversation anywhere in the world via landline or cellular telephones in a reasonably clandestine manner.

#### **Sound Capability**

The builder of a remote-controlled surreptitious listening device first needs to equip the computer with sound capability or a sound card and microphone. If the computer does not have a built-in sound card and microphone, both can be purchased for relative-

ly little cost and easily installed. The builder connects an external microphone to the signal input jack of the sound card on the back of the computer. To make detection more difficult, the builder may install the microphone inside the computer. Moreover, some builders install the microphone inside a piece of nearby equipment and then connect the microphone to the sound card in the computer. This latter approach removes the amount of possible internal ventilation fan noise from being picked up by the microphone. Additionally, with the appropriate software, builders can intercept and encrypt the audio.

#### **Modem**

Second, the builder needs a modem, a device that converts the digital format of information in computers to analog information suitable for transmission via a standard telephone network. Relatively inexpensive and easily installed, modems work well with either landline or cellular telephones,

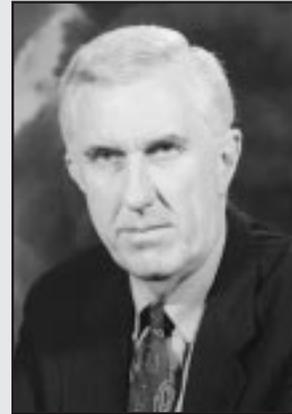
which means that locations without telephone lines remain equally capable of supporting such surreptitious audio surveillance systems.

#### **Software**

Last, the builder requires two main software programs to convert the computer into a remote-controlled listening device. One program allows the remote-controlled operation of the computer, while the other captures the audio. A number of software packages permit full operation of one computer by another (which can be located anywhere in the world) via a standard telephone connection. Remote-control computer programs cost relatively little, and some may be free via the Internet.

Computer programs designed to capture audio vary in price and sophistication. Some can be downloaded from the Internet for a small fee, while others are professional-grade audio analysis and enhancement programs costing several hundred dollars. Although criminals

**“  
...inexpensive,  
easily obtained  
computers can be  
used as effective,  
remote-controlled  
surreptitious audio  
surveillance devices.  
”**



*Mr. O'Neal, retired chief of the internal security office at the National Aeronautics and Space Administration, currently volunteers his technical expertise and guidance to the law enforcement community.*

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may sneer at price consideration, most law enforcement agencies cannot.

### **HOW IS IT DONE?**

Once the criminals have their computers installed with the appropriate hardware and software applications and placed at various sites in their territory, they use security alarms to alert them whenever their protected area has been penetrated. The target computer has remote-control software constantly running to allow it to be contacted and subsequently controlled by another computer through the telephone network whenever the criminal detects an area intrusion, calls by telephone, and enters the correct access code.

When an alarm indicating a security breach is received, the criminals immediately call via a standard telephone and remotely take control of the computer located in the area designated and protected by the alarm. The telephone does not ring, the computer does not beep, and with the monitor turned off, no flashing lights indicate the computer has been accessed. The criminals execute the sound-processing program and start capturing audio, which can be stored on a disk and sent to a remote location either immediately or later. If the audio received at the remote location is not clear, it can be improved with analysis and enhancement software.

### **WHAT ARE THE CONSEQUENCES?**

Dangerous situations may arise if law enforcement officers become the victims of surreptitious audio

surveillance. In the hypothetical scenario at the beginning of this article, the drug dealers opted to flee the scene; however, they could have chosen a different approach—to ambush the officers. Also, during the execution of the search warrant, officers might have said something inappropriate or detrimental to their case. Regardless of the outcome, surreptitious audio surveillance can have a far-reaching impact on law enforcement.

**//**  
***...the first officers at a crime scene play a crucial role in thwarting these surreptitious listening devices.***  
**//**

Setting up a surreptitious audio surveillance system is not particularly complicated, and the cost is not prohibitive. Therefore, the immediate problem for law enforcement is to determine those individuals who would create such systems not only as a means of circumventing the illegal possession of eavesdropping equipment,<sup>2</sup> but primarily as a way of turning such systems against law enforcement. Instead of using such systems as simply a warning device to protect their illegal activity, some criminals, terrorists, and other antisocial individuals may use these systems to manipulate law enforcement.

### **WHAT CAN LAW ENFORCEMENT DO?**

The solutions and preventive measures to combat this new threat are in their infancy and not well defined due to the incipient nature of such a new and rapidly changing menace. However, law enforcement can begin to counteract this new danger by educating officers and managers about the problem and recognizing that computer technology is changing law enforcement procedures. Top managers need to make this problem a priority in their departments and work with other agencies and industry professionals to cultivate the environment necessary to produce viable countermeasures.

The law enforcement community must realize that the first officers at a crime scene play a crucial role in thwarting these surreptitious listening devices. These officers must know what to look for and what to report to their superiors. For example, if the officers discover that certain criminals are attempting to use remote-controlled computerized audio intercept against them, and the suspects are unaware of the officers' knowledge, the officers can use these devices against the criminals. Knowing that the criminals can hear everything they are saying, the officers can take control of the situation and lawfully use the illegal surveillance device to their advantage. However, law enforcement management must develop and implement effective procedures for these officers to follow.

Moreover, whether responding to a radio call, executing a warrant, or participating in other related

activities, first-arriving officers should not simply turn off the suspect's computer as a "quick-fix" technical surveillance countermeasure. This approach could result in evidence being destroyed.<sup>3</sup> No one should touch the suspect's computer until after it is examined and cleared by the agency's computer crime investigators. Agencies that do not have their own computer-trained investigators can locate and obtain assistance through such sources as the Federal Computer Investigations Committee, the Florida Association of Computer Crime Investigators, and the Law Enforcement Electronic Technical Assistance Committee of Brevard County, Florida.<sup>4</sup>

Additionally, officers should consult with their agency's legal advisor or the area's local prosecutor to address any liability issues that might arise involving unknowing and innocent users of the suspect's computer. Finally, it is virtually impossible to look at a computer and determine that it is being used as a surreptitious audio device; therefore, everyone from patrol officers to top managers should be circumspect in their conversations when in the vicinity of any potentially remote-controlled computer.

## CONCLUSION

The ever-increasing advances in computer technology are subjecting law enforcement officers to many new and unknown hazards in a profession that has always been full of inherent, yet generally well-known, dangers. As with other societal improvements throughout history, the majority of technological

advances have been developed with the intent of enhancing the community. However, law enforcement must confront those situations where individuals with criminal intent use those advances for their own nefarious purposes.

Remote-controlled computers are becoming another weapon in the criminal arsenal. Law enforcement agencies must work together to recognize this problem, alert their colleagues to the new danger, and pursue efforts to prevent future occurrences. Industry professionals should be included in such endeavors and encouraged to make security issues a priority. It is the duty of law enforcement to attack this new danger with the same commitment and vigilance that it always has shown when faced with situations that have threatened its officers and the citizens they are sworn to protect. ♦

### Endnotes

<sup>1</sup> 18 U.S.C. § 2510-2521.

<sup>2</sup> 18 U.S.C. § 2512 (119)

<sup>3</sup> When law enforcement officers are executing search warrants, they must remember that paper documents are no longer the only method of transmitting information. Search warrants should include computer hardware and software items as needed.

<sup>4</sup> The Federal Computer Investigations Committee (FCIC) can be contacted through Mr. James Graham, Assistant State Attorney, Brevard County, Florida, at 407-617-7510. The Florida Association of Computer Crime Investigators (FACCI) can be contacted through its Internet site at [www.atlantic.net/~fdle-cer](http://www.atlantic.net/~fdle-cer). The Law Enforcement Electronic Technical Assistance Committee of Brevard County, Florida, can be contacted through its co-chairmen: the above-listed Mr. James Graham; Cocoa, Florida, Chief of Police David Crawford at 407-639-7620; or Titusville, Florida, Police Department Detective David Edens at 407-264-7812.

## Wanted: Photographs



The *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

Brian Parnell, Art  
Director, *FBI Law  
Enforcement Bulletin*,  
FBI Academy, Madison  
Building, Room 209,  
Quantico, VA 22135.

# Bulletin Reports

## *Homicide Study*

A report by the National Institute of Justice summarizes an eight-city study that examined the relationships between shifts in environmental factors (e.g., economic conditions) and situational factors (e.g., drug use) and increases and decreases in homicide rates. The annual homicide rates were examined in the following eight cities: Atlanta, Georgia; Washington, D.C.; Detroit, Michigan; Tampa, Florida; New Orleans, Louisiana; Richmond, Virginia; Indianapolis, Indiana; and Miami, Florida. These eight cities were selected because their homicide rates were the strongest examples of selected trends. The study also examined whether changes in the responses of the criminal justice system appeared to be related to changes in the homicide rates in those cities.

The research examined three broad areas: environmental, situational, and criminal justice system influences and attempted to link homicide rates with specific social, economic, and demographic influences. Some key findings in these areas include the following:

- Homicides in which the victim and offender were intimates or related made up a relatively small portion of all homicides, but a significant portion of female homicides
- Guns appeared to be increasing as the means of homicide
- Black males between the ages of 18 to 24 represented the greatest number of homicide victims

For a copy of the report, NCJ-167263, contact the National Criminal Justice Reference Service at P.O. Box 6000, Rockville, MD 20849-6000, phone 800-851-3420.

## *Family Violence in America*

The International Association of Chiefs of Police (IACP) recently released a report titled "Family Violence in America: Breaking the Cycle for Children Who Witness," which discusses children who witness violence in their communities and homes. In April 1997, the IACP sponsored a conference of policy makers and practitioners to help develop strategies for communities to break the cycle of family violence. The conference resulted in a total of 43 recommendations, divided into two categories.

The first category, capacity-building, recommended that community organizations and public service agencies intervene in the family violence cycle more effectively. For example, organizations and agencies could restructure criminal justice, social, community, education, and health service systems to work together to coordinate planning and policy making; to augment management and staff training for all law enforcement and

social service system providers; and to enhance public awareness of children who witness violence, the issues and the consequences of this problem.

The second category, prevention and intervention, recommended the expansion of effective services, from prevention-focused initiatives to treatment and justice system interventions for victims and perpetrators of family violence. For example, organizations and agencies could create community-based prevention initiatives and coordinate them across agencies; prepare children and youth to deal with violence and solve conflicts constructively through school-based conflict resolution and life skills education; and ensure that the justice system holds perpetrators fully accountable.

For a copy of the recommendations from the 1997 IACP summit, contact the IACP at 515 North Washington Street, Alexandria, VA, 22314-2357, phone 800-843-4227.

## *Federal Officer Statistics*

According to a recently released Bureau of Justice Statistics (BJS) survey, as of June 1995, federal agencies employed about 74,500 full-time personnel authorized to make arrests and carry firearms. This figure, which includes supervisory personnel, is up about 6 percent since the last survey conducted in 1993.

On average, nationwide, there were 28 federal officers per 100,000 residents. States ranged from more than 50 per 100,000 in Arizona and Alaska, to under 10 per 100,000 in Rhode Island, Wisconsin, Ohio, New Hampshire, and Iowa.

Federal officers' duties fell into six areas: criminal investigations and enforcement (43%), corrections (21%), police patrol (16%), noncriminal investigations (13%), U.S. court operations (4%) and security services (3%).

Women accounted for 14% of the federal officers. By race and Hispanic origin, 72% were white non-Hispanics; 12%, black non-Hispanics; 13%, Hispanics of any race; 2% were Asian or Pacific Islanders; and 1% were American Indian.

According to the report, the majority of federal officers were employed by the Immigration and Naturalization Service, followed by the Bureau of Prisons, the FBI, and the Customs Service. There were 12 other agencies employing at least 500

officers. The totals exclude federal officers serving in foreign countries, U.S. territories, or those enlisted in the Coast Guard and armed forces.

For a copy of the report, NCJ-164617, call the BJS fax-on-demand system, 301-519-5550, or access the BJS home page at <http://www.ojp.usdoj.gov/bjs>.

## *Death Row Data*

According to a recently released BJS report, 19 states executed 45 prisoners in 1996—36 by lethal injection, 7 by electrocution, 1 by hanging, and 1 by firing squad. The bulletin, "Capital Punishment 1996," by Tracy Snelling, provides a breakdown of the executions by state, method, and demographics for executed prisoners, as well as for those who remain on death row. Among the highlights: Virginia topped the list of executions with 8; California maintained the highest number of death row inmates with 454; 49 women were serving death sentences in 1996; and by the end of the year, the youngest inmate under a death sentence was 17; the oldest, 81.

The report also provides cumulative data from 1930 through 1977 and previews figures for 1997, during which 70 prisoners were executed in the first 11 months, representing the most executions in a single year since 76 inmates were put to death in 1976. For a copy of the report, NCJ-167031, call the BJS fax-on-demand system, 301-519-5550, or access the BJS home page at <http://www.ojp.usdoj.gov/bjs>.

**Bulletin Reports**, a collection of criminal justice studies, reports, and project findings, is compiled by Glen Bartolomei. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Madison Building, Room 209, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

# Community Policing

## The Process of Transitional Change

By MICHAEL G. BRECI, Ph.D., and TIMOTHY E. ERICKSON



Community policing has captured the attention of police agencies across the country. A national survey of police departments in areas with a population of more than 50,000 found that over one-half of the agencies have implemented community policing, and an additional 20 percent indicated they planned to do so.<sup>1</sup> The Violent Crime Control and Law Enforcement Act of 1994, which provides funding for 100,000 new police officers, has motivated many departments to develop programs that encompass various elements of community policing in an effort to receive additional funding. The question arises, are these agencies truly implementing

community-oriented policing (COP), or are they merely trying to obtain the available federal funding?

Over the last 10 years, many experts have written on the subject of COP. Despite the availability of this literature, a lack of clarity or consensus seems to exist as to whether agencies, in fact, provide police services using a COP model. Conceptually, community policing has many meanings.<sup>2</sup> For some agencies, it represents a philosophy, while for others, it describes activities and programs. Given the problem of defining community policing, it is not surprising that critics have questioned whether the law enforcement community

seriously has embraced community policing.

A preliminary analysis of the effects of The Violent Crime Control and Law Enforcement Act of 1994 on moving agencies toward community policing suggests that organizations have been slow to implement structural changes that reflect the philosophy of community policing.<sup>3</sup> The authors of the book *Community Policing*, considered COP pioneers, contend that it takes an agency about 10 years to fully implement community policing.<sup>4</sup> This suggests that the controversy over whether or not a department is, in fact, using COP may be more a reflection of time rather than definition.

The authors of this article initially conducted a study to help law enforcement students comprehend the underlying principles of COP. In this study, they examined three areas: 1) law enforcement administrators' perceptions of community policing; 2) how administrators have implemented the principles and strategies of COP in their agencies; and 3) the skills administrators believe effective community police officers need.

## METHODOLOGY

The authors collected data for this study from the 89 law enforcement agencies in the Minneapolis-St. Paul metropolitan area. Approximately one-half of the population of Minnesota lives in this seven-county area, and one-half of the 8,000 law enforcement officers in the state work in this metropolitan area.

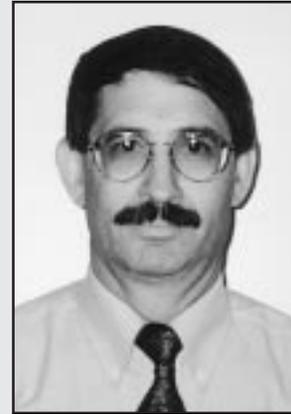
During the summer of 1996, the authors developed a survey and sent it to each of the department heads of the 89 agencies. A cover letter explaining the intent of the study accompanied the questionnaire. Within 2 months, a total of 75 surveys were returned, representing an 84 percent rate of response.

## THE INSTRUMENT

The questionnaire for this study was developed to assess law enforcement agencies' level of involvement with COP. Questions focused on three main sections: philosophy, strategies, and officer skills. Department heads were asked to identify themselves and the number of full-time sworn officers they employed. Respondents also were asked if their agencies



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identified themselves as COP agencies, and if so, how long they had been involved in community policing and how many officers were assigned specifically to COP duties.

The philosophy section consisted of 10 statements that reflect the underlying principles of community policing as identified in the book *Community Policing*. The survey asked respondents to indicate which of the following activities their departments had performed:

- Secured commitment and support from city/county management to implement COP
- Developed a departmentwide strategy to implement COP
- Integrated all divisions and individuals in the agency into the COP process
- Provided special training to department personnel regarding the philosophy, strategies, and duties associated with COP
- Relieved officers from traditional patrol duties and

assigned them to specific problem areas

- Gave individual officers discretion and authority to use problem-oriented strategies to address calls for service
- Amended their agency personnel evaluation process to account for the new tasks associated with COP
- Established formal community partnerships to identify and address community problems and crime
- Increased the direct participation of citizens in addressing community problems
- Refocused both the department's and community's expectations of police service to accommodate for COP (e.g., effect on response time, citizen responsibilities, etc.).

The next section of the survey examined the strategies that departments used to implement community policing. The open-ended question asked respondents to list any strategies that their agencies

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regularly performed that illustrated a commitment to COP.

The final section consisted of the following eight skills or traits associated with officer competence in COP: problem-solving skills, ethical integrity, interpersonal communication skills, writing skills, knowledge about the causes of and solutions for crime, mediation skills, organizational skills (organizing groups and communities), and college-level preparation. Respondents were asked to check those skills they thought were critical for the effectiveness of officers assigned to COP.

## FINDINGS AND DISCUSSION

### Sample Characteristics

The 75 agencies that responded ranged in size from 1 to 850 sworn officers. Approximately one-half of the agencies had 25 or fewer officers, while 6 of the departments had 100 or more officers.

Fifty-nine of the 75 agencies that responded identified themselves as COP agencies. Twenty of the agencies were in their first year of COP, while 8 indicated they had instituted community-oriented policing at least 10 years earlier. The majority of agencies had been involved with COP for less than 5 years.

### Common Concepts of COP

More than 70 percent of the agencies incorporated 5 of the 10 principles that encompass the COP philosophy. These 5 principles exhibit both the internal organizational changes and the external changes that embody police-community involvement. These 5

principles incorporated by the agencies are: giving officers discretion and authority, freeing up officers to work COP, training all personnel regarding COP, establishing community partnerships, and increasing participation of citizens.

COP is based on the premise that line officers have the authority and discretion to develop solutions to problems occurring in neighborhoods. This, in fact, represented the most widely accepted principle held by administrators. Relieving officers from traditional patrol duties to work in specific problem areas

**//**  
***COP...is based on the philosophy that the police and the community work together....***  
**//**

paralleled this principle. These practices reflect changes within the department regarding the delivery of police services, which suggests that administrators perceive that traditional reactive policing does not adequately address problems facing communities today. In contrast, problem-solving techniques provide proactive means for combating recurring problems within the community.

COP also is based on the philosophy that the police and the community work together to solve problems. Acknowledging the importance of this facet of COP, agencies established formal partnerships

with the community, increased direct participation of citizens in addressing community problems, and secured commitment and support from city or county management. These actions suggest that law enforcement administrators recognize that the police cannot solve all of the problems facing communities on their own. As a result, they have developed ties with the broader community in an attempt to eliminate the us-versus-them mentality that often characterizes traditional reactive policing.

The four principles least likely to have been implemented involved internal changes within the agency. Specifically, agencies did not amend the evaluation process, refocus expectations, integrate the entire agency into COP, or develop a departmentwide strategy. It is possible that the process of converting to COP requires that certain changes take precedence over others, and in time, departments will implement the remaining principles as they progress in their "journey" to COP. If so, then it would appear that agencies implementing the above principles are, in fact, community policing agencies because they have created ties with the community and developed new ways to deliver services based on proactive policing.

Yet, based on conversations with officers and chiefs from a number of agencies, the authors have concluded that this may not be the case and offer an alternate hypothesis. Three principles lay the groundwork for the change to COP and require implementation during the first stage of the transition to community policing.

First, departments must develop a departmentwide strategy to implement COP. A key step in the process requires participation from all members of the agency. This step often is neglected, especially when agency administrators conceive, develop, and implement the COP initiative without input from other employees. Members of the agency excluded from the planning process are more likely to perceive COP as just another public relations program instituted by the chief. When officers lack participation in the COP process, the chances for undermining it increase.

The second principle means integrating all divisions and individuals into the COP process. As one chief stated: "Our department is integrated around the COP philosophy. It is the philosophy that is important, and everyone, including civilian staff, needs to be committed to it." The philosophy provides the framework for police-community relations and affects how the police deliver services to the community.

Establishing community partnerships designed to address and solve problems confronting residents is the common bond that guides departments committed to COP. Community-oriented policing does not mean special units that work in isolation from the rest of the department. Special units represent tools that departments can use to address specific problems identified by the police and the community. Agencies that create special units assigned solely to community policing typically create hard feelings and misunderstandings among other department

<b>Community Policing Principles Implemented by 75 Minnesota Law Enforcement Agencies</b>		
<b>Principles</b>	<b>Yes</b>	<b>No</b>
Gave officers discretion and authority	78%	22%
Established community partnerships	75%	25%
Freed up officers to work COP	72%	28%
Increased participation of citizens	72%	28%
Trained all personnel on COP	71%	29%
Secured support from city administrators	63%	37%
Developed departmentwide strategy	54%	46%
Integrated entire agency into COP	49%	51%
Refocused expectations	43%	57%
Amended evaluation process	31%	69%

personnel, especially those in patrol.

The third principle involves providing training to all department personnel regarding the philosophy, strategies, and duties associated with COP. Community-oriented policing differs fundamentally from traditional policing and compels officers to look at the profession of policing in a different way. Without proper training, officers are unsure of what COP is, how it is implemented, and what their roles are, resulting in confusion, misconceptions, and resistance to change. Officers who think of COP as nothing more than social work will have nothing to do with it. Oftentimes, such officers have had little or no training in COP.

This study found that agencies incorporating these three principles in the first stage of the implementation process are more likely to have a successful transition. Working through the process of developing a strategy, integrating it throughout the department, and exploring the possibilities COP extends for delivering police services create a solid

foundation that encompasses all department personnel. The COP philosophy directs and guides the mission of the police in the community. It unites officers and administrators in a common quest for making the community a safer place. As a result, the remaining principles generally are implemented rather quickly following the transition stage.

Administrators in agencies that have implemented COP point out, however, that the transition to community policing takes a considerable amount of time to develop and execute. One chief thought that it takes at least 10 years to change an organization.

#### *Strategies*

The survey asked respondents to list all of the strategies that their agencies regularly perform that relate to COP. Fifty respondents<sup>5</sup> listed 129 strategies, which were grouped into 10 common topics.

The most widely cited strategies involved developing school programs and working with

### Number of Community Policing Strategies Implemented

Strategies	Departments Responding (50)
School programs .....	23
Officers working with community groups .....	21
Crime prevention programs .....	16
Community involvement .....	13
Block clubs and neighborhood watches .....	12
Problem-oriented policing .....	10
Officers working in neighborhoods .....	10
Alternative strategies (e.g., bike patrol) .....	10
Community feedback .....	8
Citizen police academy .....	6

community groups. Drug Abuse Resistance Education and Gang Related Education and Training represent some of the school programs reported by the department heads, along with school liaisons and such juvenile programs as Explorers. The community groups listed included business owners, apartment managers, and apartment residents.

Sixteen departments developed crime prevention programs designed to provide information to the community. These programs included sponsoring conferences with community groups, involving residents in the hiring process, and developing associations with the citizens by organizing and working to develop block clubs and Neighborhood Watches.

Some strategies used by a number of police agencies to increase police visibility included problem-oriented policing strategies, officers working in substations and/or walking the beat, team policing, and bike patrols. Additional methods designed to increase ties with the community included seeking

community feedback through surveys, interviews, or phone calls, as well as establishing citizen police academies.

Still, community-oriented policing is a philosophy. Strategies evolve from the philosophy as methods to accomplish COP goals. In other words, until the philosophy is integrated throughout the agency using the three core principles discussed, strategies lack coherence.

#### *Officer Skills*

The survey specifically asked respondents which skills or traits they felt were critical for officers engaged in community policing. Interpersonal communication skills, problem-solving abilities, mediation skills, ethical integrity, the ability to organize groups and communities, and knowledge of the causes of and solutions for crime were supported overwhelmingly by the department heads. Two out of three also perceived writing skills as important for officers engaged in COP.

Interestingly, only 33 percent felt that college-level education was important for developing the skills officers need to perform COP. Ironically, the skills and traits they have identified as crucial for COP generally are attributed to individuals who have college educations.

Clearly, department heads recognize that community policing requires that officers develop and possess skills typically not associated with traditional reactive policing. It follows that education and training become acute prerequisites for the transition to COP. Line officers remain the key to its successful implementation. It makes little sense to send officers into the community to implement COP with deficient skills and only a vague notion of what they are supposed to accomplish.

### CONCLUSION

Interest in community-oriented policing is sweeping through police agencies and academic circles across the country. Community policing sessions at the national meetings of such professional organizations as the Academy of Criminal Justice Sciences and the American Society of Criminology are well attended and provoke charged discussions regarding definitions and issues relating to implementation of COP.

In many of these sessions, attendees discuss common problems of implementing community policing. Such discussions reveal that many of the agencies that encounter resistance from their officers have not implemented the three principles laid out as critical to the success of COP.

The majority of the department heads in the Minneapolis-St. Paul metropolitan area seem committed to implementing COP in their agencies and not just trying to obtain available federal funding. However, guidelines for changing police agencies remain incomplete and sketchy. This leaves many administrators searching for ways to make COP fit their departments and communities.

The authors' survey found that agencies that successfully implement COP offer three guidelines or suggestions for change. First, implementing COP must be a departmentwide effort; it is not something the department head can do alone. Second, involving everyone in the development and implementation ensures ownership and commitment to the philosophy of COP. Finally, the change to COP is a process that takes time and a tremendous amount of work. Still, the effort is worth it. As one chief whose department has successfully implemented COP said, "COP is the only real way that the police can effectively deliver services. COP is what the police are supposed to be." ♦

#### Endnotes

<sup>1</sup> Department of Justice, FBI, *Community Policing: A Survey of Police Departments in the United States* (Lansing, MI: National Center for Community Policing, 1993).

<sup>2</sup> J. Seagrave, "Defining Community Policing," *American Journal of Police* 15, no. 2 (1996): 1-22.

<sup>3</sup> J. Ziembo-Vogl and D. Woods, "Defining Community Policing: Practice Versus Paradigm," *Police Studies* 19, no. 3 (1996): 33-50.

<sup>4</sup> R. Trojanowicz and B. Bucqueroux, *Community Policing* (Cincinnati, Ohio: Anderson Publishing, 1990), 16.

<sup>5</sup> Of the 75 surveys returned, 25 did not respond to this question.

## Unidentified Victim

The Rock County, Wisconsin, Sheriff's Department has requested assistance in identifying the skeletal remains of a white female found on March 20, 1997, near the parking lot of the Naughty But Nice adult bookstore, 3503 East County Trunk South, Beloit, Wisconsin. The Rock County Sheriff's Department is investigating and treating this unidentified remains case as a murder.

An entomologist has determined that the insect activity on and around the remains indicates that the body may have been moved to the parking lot sometime between August and October, 1996. However, an anthropologist has concluded that the body's decomposition and mummification may indicate that the remains had been at that location as early as summer 1995. Dental records indicate that the teeth were well cared for, showing previous orthodontic work and the use of sealants. A facial reconstruction has been performed.

The alleged victim is believed to have been a 5-foot, 4-inch to 5-foot, 7-inch-tall white female between 19 and 30 years old with light to medium brown shoulder length hair. She was wearing a Dickies-brand dark short-sleeve, button-down work shirt, size XXL; a size 34B J. C. Penney-brand bra; and a medium-sized T-shirt with the words "Kermit Clein Underwhere" and an image of Kermit the Frog on the front. A cross, a necklace, and two rings were also located with the remains.

The Rock County Sheriff's Department is located at 200 East U.S. Highway 14, Janesville, WI, 53545. Information regarding this case should be directed to Detective David E. Bier, 608-757-7927.



Facial reconstruction of victim



Jewelry found with victim

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# ***DVERTing Domestic Violence*** ***The Domestic Violence Enhanced*** ***Response Team***

By LORNE C. KRAMER, M.A. and HOWARD BLACK



**T**he year 1984 marked a turning point for the way many police agencies responded to domestic violence incidents. The Minneapolis Domestic Violence Experiment indicated that arresting offenders reduced recidivism more than separating couples or providing mediation.<sup>1</sup> In response, many police departments developed mandatory arrest policies.

Yet, subsequent studies produced different results. In Colorado Springs, Colorado, for example, the police department's study of more than 1,600 cases revealed that of four law enforcement responses—restoring order, providing crisis intervention, issuing emergency protection orders, or

arresting offenders—custodial arrest emerged as only slightly more effective in reducing recidivism rates. While the original experiment and subsequent replication studies may not have pinpointed the most effective *singular* approach to domestic violence cases, they did illustrate the difficulty that a single community agency faces when attempting to determine the appropriate intervention for a complex issue like domestic violence.

Indeed, the Colorado Springs Police Department discovered that no easy answers exist where domestic violence is concerned. But committed to developing innovative strategies to combat domestic violence, the department developed a

program to pool the resources of community organizations, intervene in the most volatile cases, and reach out to victims in rural areas. This program, the Domestic Violence Enhanced Response Team (DVERT), accomplishes all of these objectives and more.

## **An Evolutionary Process**

DVERT did not materialize overnight. Rather, it grew slowly from firmly established and well-nurtured roots. First, the department established a protocol to guide police officers during domestic violence calls. In conjunction with the development of these police response standards, the district attorney's office created a

companion set of guidelines for prosecutors. The local domestic violence counseling and shelter program also joined these collaborative efforts. The new procedures improved the community's response by requiring mandatory arrest of perpetrators when probable cause existed, implementing emergency protective orders to keep victims safe, using a special form to enhance information gathering by the district attorney, and advising victims of their legal rights and available services. In addition, the district attorney agreed to prosecute domestic violence offenders with or without the cooperation of the victims.

Next, the department appointed a domestic violence coordinator. This full-time, sworn position allows the department to improve current policies, procedures, and protocols and to respond better to the needs of victims. For example, after evaluating state domestic violence and stalking laws, the coordinator worked to establish a regional domestic violence offender tracking system. And, in keeping with the department's community policing philosophy, this position requires maintaining community-based efforts to refine and enhance the collective responses to domestic violence.

Finally, the Pikes Peak Domestic Violence Coalition Protocol Committee, whose members include law enforcement, social services, and clinical personnel, developed and distributed a questionnaire to evaluate the effectiveness of the community's domestic violence protocols, as well as to identify significant issues and obstacles



*Chief Kramer commands the Colorado Springs, Colorado, Police Department.*



*Detective Black serves as the Colorado Springs Police Department's domestic violence coordinator.*

to their implementation. Staff from Colorado University's Colorado Springs Center for Justice Studies analyzed the results. While they applauded the collaborative efforts of law enforcement, criminal justice, and other public and private agencies to arrest and prosecute domestic violence offenders, the findings also identified the need for changes in existing practices, along with "...increased communication, training, and further study and evaluation." Specifically, the survey results pointed to the need to

- Improve and expand criminal justice programs and procedures to prosecute, convict, and sentence domestic violence offenders
- Better develop, preserve, and present the legally relevant facts in domestic violence cases. Specifically, the evaluators noted that better communication among advocates, prosecutors, law enforcement, and social service agencies would foster the kind of

information exchange needed to successfully prosecute domestic violence offenders

- Involve other community agencies, groups, and organizations in creating and improving programs that prevent and control domestic violence, assist victims, and punish offenders
- Collect and analyze a large array of objective evidence to measure accurately the effectiveness of current practices and to provide a baseline for gauging the success of any programs implemented in the future.

Armed with the results of the survey and faced with a staggering 15,000 to 20,000 domestic violence-related calls for service annually, the department created the Domestic Violence Enhanced Response Team. In addition to numerous local law enforcement and social services agencies, the team encompassed the district attorney's office and the University of

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Colorado's Center for Justice Studies.

### **A Two-Track Approach**

The program follows a two-track approach. Taking a proactive stance, staff members carefully review all referrals to DVERT for cases of imminent danger. They check criminal and prosecution histories, restraining orders, victim advocate records, human services documentation, and any other records that would indicate that the situation warrants immediate intervention. If the team determines that a referral meets sufficient lethality criteria, it accepts the case.

Several things happen next. First, the team's staffing unit recommends immediate interventions by the various DVERT member agencies. Next, the names and addresses of victims and offenders are marked as DVERT "clients" in the department's computer-aided dispatch system. In this way, whenever officers respond to an address or check wanted and warrant records, they know they are dealing with potentially dangerous individuals.

Following the initial team response, ongoing intervention occurs as needed via counseling, advocacy, shelter, support, and legal services. At least once a week, a DVERT victim advocate contacts the victim to provide support, information, and resources. Victims who need immediate assistance receive cellular phones that give them direct access to 911. Others receive microcassette recorders to document telephone harassment and violations of restraining orders.

DVERT's second track is reactive. When patrol officers respond

to a DVERT-identified address and determine that probable cause exists for a new domestic violence violation, they call the primary response team to the scene. This team includes a specially trained law enforcement officer or detective, a deputy district attorney, a department of human services caseworker, and a victim advocate from the Center for the Prevention of Domestic Violence. On the scene,

**// DVERT specifically was designed to address the highest risk cases. //**

the three-person primary team assists the patrol officer with the investigation of the possible offense and provides support services to the victim. When the victims include children, pets, or the elderly, or when the incident involves military personnel, experts in these areas respond as a secondary team.

DVERT specifically was designed to address the highest risk cases. Domestic violence cases that do not meet the level of potential lethality required for DVERT may sometimes require intermediate intervention and limited-duration monitoring. In these cases, a team of law enforcement officers, using problem-oriented policing (POP) principles, analyzes each case and develops a specific plan of action. Then, a law enforcement officer, a

victim advocate, and, if necessary, a human services caseworker implement the plan, monitor the case, and provide assistance as needed. These POP cases, as they are called, generally require less attention than DVERT cases, although an escalation of violence might justify reassignment to DVERT. At the same time, a case could move from DVERT to POP if offenders make a consistent and concerted effort to change their behavior.

### **Reaching Out to Rural Victims**

Typically, domestic violence victims in rural communities live far from public transportation, social service providers, health-care services, and criminal justice support. Studies reveal that in rural communities, residents are more likely to fill traditional social roles, which may make them more prone to domestic violence. In addition, they often are related to one another and usually know one another's business. As a result, they feel greater levels of shame. At the same time, they often distrust outsiders and dislike government interference. All of these factors can complicate the ability of domestic violence victims in rural areas to obtain help. Studies on rural domestic violence outreach programs also reveal that many battered women cannot or will not use these services, suggesting that the number of battered women in rural areas remains unknown, and worse, these women continued to be victimized.<sup>2</sup>

In addition, domestic violence victims and perpetrators generally tend to be highly mobile, often moving from one law enforcement jurisdiction to another. In doing so,

they complicate law enforcement's ability to intervene. Expanding DVERT into rural areas of the state provides additional resources, training, and support for rural law enforcement officers investigating domestic violence cases and enhances DVERT's network for tracking and holding DVERT offenders accountable. Moreover, because advocates come from within the community, victims are less likely to perceive them as outsiders.

### **Providing Legal Assistance**

Whether they reside in urban, suburban, or rural areas, domestic violence victims have a critical need for legal advice and advocacy. Their lack of knowledge of their legal rights, especially regarding restraining orders, child-custody issues, and divorce proceedings, allows their abusers to control, intimidate, and manipulate them. Unfortunately, victims often lack the financial resources to obtain the legal advice they need. As part of the DVERT program, domestic violence victims receive free legal services.

### **Training DVERT Staff**

A comprehensive, multidisciplinary training program represents an important component of DVERT. Law enforcement officers study the complex nature of domestic violence cases and victim response and review departmental arrest policies. They also learn how to identify primary aggressors, distinguish offensive wounds from defensive wounds, improve their evidence-gathering techniques, and conduct more thorough follow-up investigations.

Other training focuses on providing prosecutors, victim advocates, human services caseworkers, and humane society employees with information on domestic violence identification, intervention techniques, advocacy and safety issues, stalking laws, case documentation and enhancement, and vertical prosecution.<sup>3</sup>

Photo © Don Ennis



### **Using Tools and Technology**

DVERT uses a variety of tools to enhance its investigation and prosecution of cases. Polaroid and video cameras document the injuries victims sustain, as well as violations of restraining orders. Microcassette recorders hooked up to victims' telephones record harassment. Cellular phones, pagers, and police radios give victims round-the-clock access to the police, human services personnel, and victim advocates. With computers in their patrol cars, DVERT officers can quickly retrieve an offender's criminal history and react accordingly. Bullet-proof vests protect victim advocates who respond to DVERT calls, a testament to the inherent danger of domestic violence cases.

### **Rotating Officers**

In order to expose as many patrol officers as possible to the DVERT program, each uniformed officer spends 100 days with the team. In doing so, they not only provide valuable assistance to the permanent DVERT staff, but they also establish relationships with community organizations that will help them solve other problems they encounter on the street. In fact, they can carry the principles of community- and problem-oriented policing with them to respond to the needs of all community residents.

### **Overcoming Challenges**

As with any new program, DVERT has had its share of obstacles and challenges. From the start, a myriad of questions arose: What goals should the program have? How should they be achieved? How would the limited staff handle the sheer volume of cases with even more limited resources?

First, the group had to determine the criteria that would mark a case high risk requiring DVERT attention. While a number of individuals and organizations have developed variations of lethality scales, which attempt to quantify the degree of a case's lethality, no standardized tool exists. Thus, to help predict the potential for a case to turn deadly, the team combined the most commonly accepted indicators—such as a history of domestic violence, multiple law enforcement interventions, stalking behavior, threats to kill, access to weapons, marital problems (e.g., divorce or separation), and personal setbacks (e.g., job loss)—with the

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expertise of specially trained professionals from DVERT's staffing unit.

Confidentiality represented another thorny issue. Whenever possible, the group modified the confidentiality agreements of participating agencies to allow the release of information to DVERT. However, state statute prevents some agencies from releasing certain types of information. For example, the police department can share National Crime Information Center data only with other law enforcement agencies. Still, because information sharing represents the heart of DVERT's ability to act effectively, the team continues to seek ways to overcome confidentiality concerns.

The sheer number and complexity of DVERT's cases presented an enormous challenge. Collaboration proved to be the key to solving this dilemma and many others; yet, it, too, presented a challenge. The common goal for all involved became putting aside territorial issues and concentrating on doing the right thing for the families affected by violence.

### Measuring Results

As with any new program, measuring its effectiveness requires hard data. Although these results are not yet in, DVERT seems to have reduced recidivism for domestic violence offenders. In fact, of the 196 cases opened thus far, fewer than 20 repeat arrests have resulted. One offender who had been arrested 24 times in the past has not reoffended.

The participating agencies measure success in more qualitative

ways. For example, by developing a clearer understanding of the underlying dynamics of domestic violence, prosecutors build better cases. When defendants realize the quality of the case against them, many plead guilty to reduced charges. Still, domestic violence offenders face greater legal consequences, higher bonds, enhanced sentences, supervised probation, and more monitoring. As the county court administrator put it, "We are closing the cracks these perpetrators used to slip through before."

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***...DVERT seems to have reduced recidivism for domestic violence offenders.***

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For victim advocates, the chance to respond at a victim's home gives them a new perspective on what domestic violence victims face on a daily basis. This increased sensitivity makes helping victims take steps toward healthier lives that much more rewarding.

Moreover, as the partners share information and work together, a synergy occurs that carries over into other, non-DVERT cases. Indeed, the partners form bonds that dissolve jurisdictional boundaries and battle lines. Before one DVERT meeting, a victim advocate declared: "I'm starting to talk like a

cop." "I'm starting to talk like an advocate," replied an officer.

### Conclusion

Once viewed as a private matter between a husband and wife, domestic violence calls now demand serious attention from law enforcement. Yet, the dynamics of domestic violence make these cases some of the most complex cases officers will ever have to face. Research has shown that arresting offenders represents merely one part of the puzzle. Only a combination of interventions can effectively help both offenders and victims piece their lives back together. Equally important, agency personnel who respond to domestic violence cases need the tools and training to fulfill their missions.

As it does for many other crime concerns, collaboration among community agencies may prove the best way to address these issues. Through the combined efforts of the district attorney's office, social services personnel, victim advocates, the University of Colorado, and a host of law enforcement agencies, the Colorado Springs Domestic Violence Enhanced Response Team brings about a coordinated, seamless approach to the systemic problem of domestic violence. ♦

### Endnotes

<sup>1</sup> Lawrence Sherman, "Domestic Violence," study guide, (U.S. Department of Justice: National Institute of Justice, n.d.).

<sup>2</sup> N. Websdale, "Rural Women Abuse," in *Violence Against Women* 1, 4, 1995.

<sup>3</sup> The term "vertical prosecution" applies to the practice of having prosecutors handle one case from start to finish in order to better serve the interests of victims, offenders, and the community.

# The Workplace Privacy of Law Enforcement and Public Employees

By MICHAEL J. BULZOMI, J.D.



**P**rivacy in the workplace is an area of increasing concern for law enforcement agencies and officers. On a daily basis, unexpected situations occur that often require the retrieval of materials from an employee's office, desk drawer, file cabinet, or locker. Law enforcement organizations and employees have a shared interest in not banning access to these areas if the items they contain are necessary for work. On the other hand, there may be items in these areas that, if discovered, may cause embarrassment or result in administrative or criminal action. This article addresses the prerogatives of

management in conducting workplace searches and the privacy rights of employees who may become implicated in them.

## Fourth Amendment Considerations

The concept of privacy in the workplace is complex. The Fourth Amendment provides that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated." Under the Fourth Amendment, a search must include two factors. First, it must involve a government action as opposed to a private

action. Second, it must intrude upon an area that has a reasonable expectation of privacy.<sup>1</sup> In this article, the first factor is assumed because the government is conducting the search. The second factor, whether employees have a reasonable expectation of privacy in the workplace area searched, is the focus of this article.

If employees have no reasonable expectation of privacy in their offices, desks, files, lockers, or cruisers, intrusions into these areas would constitute searches under the Fourth Amendment. Conversely, if an employee does have a reasonable expectation of privacy

in such areas, the extent to which the government may intrude on this constitutionally protected privacy interest is determined by whether the search itself is reasonable in both its inception and in its scope. This holds true whether the intrusion is for noninvestigatory, work-related reasons or for investigations of work-related misconduct. As a general rule, intrusions that are reasonably employment-related do not require warrants to be considered reasonable under the Fourth Amendment and are evaluated on a case-by-case basis.

### **Warrantless Administrative Searches**

Police officers are not, by virtue of their employment, deprived of the protection of the Constitution. The Supreme Court has ruled that police “are not relegated to a watered-down version of constitutional rights.”<sup>2</sup> However, in *O’Conner v. Ortega*,<sup>3</sup> the Supreme

Court decided that the very nature of a public employee’s position allows some intrusions into privacy that would not otherwise be tolerated by the Fourth Amendment.

The reality is that the facilities of a government agency typically are shared by many and leave little space for privacy. Employees usually work in buildings and use equipment owned by the government as opposed to being privately owned. Also, the invasion of a public employee’s expectation of privacy must be balanced against the government’s need for supervision and control. Additional considerations must involve the efficient operation of the workplace, including the issue of employee integrity.

In *Ortega*, a state hospital physician came under scrutiny due to possible improprieties in the management of a training program and was placed on administrative leave. During the ensuing investigation, hospital officials searched his

office. Personal items seized from his desk and file cabinets were used in administrative proceedings that resulted in his discharge. The hospital claimed that the search was carried out pursuant to its policy of conducting a routine inventory of a terminated employee’s office in order to secure state property. However, at the time of the search, the physician had not been terminated. He contended that the purpose of the search was to secure evidence against him. He subsequently brought a suit against the hospital, alleging the search was unreasonable and violated the Fourth Amendment.

The Supreme Court has identified certain factors, such as actual office practices or legitimate departmental regulations, that may reduce a public employee’s expectation of privacy in an office, desk, or file cabinet. The boundaries of the workplace context include “those areas and items that are related to work and are generally within the employer’s control.”<sup>4</sup> Thus, the question of whether an employee has a reasonable expectation of privacy must be addressed on a case-by-case basis in the context of the employment relationship.

In *Ortega*, the Court offered three examples of legitimate work-related reasons for employers to search employee work spaces: 1) The need to obtain correspondence or a file or report available only in an employee’s office while the employee is away from the office; 2) the need to safeguard or identify state property or records in an office in connection with a pending investigation into suspected



*Special Agent Bulzomi is a legal instructor at the FBI Academy.*

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employee misfeasance; and 3) the need to conduct a routine inventory for the purpose of securing government property.

The Court noted that “not everything that passes through the confines of the business address can be considered part of the workplace context.”<sup>5</sup> In fact, “the appropriate standard for a workplace search does not necessarily apply to a piece of closed personal luggage, a handbag, or briefcase that happens to be within the employer’s business address.”<sup>6</sup>

The Court concluded that “...requiring an employer to obtain a warrant whenever the employer wished to enter an employee’s office, desk, or file cabinets for a work-related purpose would seriously disrupt the routine conduct of business and would be unduly burdensome.”<sup>7</sup> Accordingly, the Court ruled that all an employer needs for a work-related intrusion to be deemed reasonable under the Fourth Amendment is a reasonable suspicion “that the search will turn up evidence that an employee is guilty of work-related misconduct or that the search is necessary for a noninvestigatory, work-related purpose, such as retrieving a needed file.”<sup>8</sup>

### **Private Property in the Work Space**

As a general rule, searches of employees’ private property, such as purses, wallets, and personal mail, that is located in their work spaces are subject to full Fourth Amendment protection, requiring probable cause and a search warrant. However, there are excep-

tions. For example, in *Gossmeier v. McDonald*,<sup>9</sup> the United States Court of Appeals for the Seventh Circuit found the warrantless search of privately owned property in the employee’s work space reasonable under the Fourth Amendment.

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*Gossmeier* involved an anonymous tip that a state child protective investigator was concealing child pornography in her office. Law enforcement officers from three different agencies conducted a warrantless search of the investigator’s office. The search included a file cabinet and a storage unit that the investigator had purchased at her own expense, to which she maintained the only keys. Officers found no pornography—only work-related evidentiary photographs. The investigator brought suit, claiming that her Fourth Amendment rights had been violated through an illegal search and seizure.

The court advised that the government was “dealing with an activity—child protection—and a setting—the government workplace—that supported the govern-

ment’s reasonable access for the purposes of assuring that all relevant rules and regulations were being followed.”<sup>10</sup> The suspect investigator had unusual access to children and the extraordinary authority to take explicit photographs of them. The court advised that the anonymous tip showed sufficient reliability because the source identified herself as a co-worker, made serious and specific allegations that created a reasonable suspicion, and gave detailed information as to the location of the photographs. The court found that the search was justified at its inception because the government had a reasonable suspicion that the search would uncover evidence of an employee’s misconduct.

The court also found that the search was reasonable in its scope, including the private property of the employee. The court noted that although the investigator had exclusive control over the storage unit and filing cabinet with lock and key, these items were used to store evidentiary photographs, files, documents, work-related sundries, and some personal items. The court noted that most of the contents were work-related items, and the investigator was the subject of a work-related investigation. The court found that these containers were not personal containers that just happened to be in the workplace; they were containers purchased primarily for the storage of work-related materials.

The court determined that there was no constitutionally protected privacy interest in the office, desk, storage unit, or filing cabinet

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because the items were part of the workplace, rather than part of the individual's personal domain. The court concluded that the warrantless workplace search was reasonable in scope and that the presence of outside law enforcement officials was required in order to determine whether any of the items found would constitute illegal pornography.

### **Administrative vs. Criminal Searches**

In *United States v. Taketa*,<sup>11</sup> the United States Court of Appeals for the Ninth Circuit determined that when the focus of a workplace search for evidence turns into a criminal investigation, a warrant based on probable cause is necessary. *Taketa* involved the office of a Nevada Bureau of Investigations (NBI) officer. The office was located in the work space of a joint task force run by the DEA.

In *Taketa*, an internal affairs investigation was begun when a DEA agent reported to her superior that another DEA agent had shown her how to modify pen register equipment to record phone conversations in violation of federal law. Based upon this information, forced entry was made into the NBI officer's office, where a pen register was operational. This entry supposedly was made under the authority of DEA regulations that require employees to maintain clean desks and allow for periodic inspections to ensure regulation compliance.

Evidence of the inappropriate use of the pen register was found in the form of a conversation tape

made by an "intelligence kit" used for covert audio surveillance, which recorded a conversation while the search was being conducted. At that time, a video camera was installed in a position to film only the area of the office where the pen register and the covert recording equipment were located.

Two subsequent entries were made into the office to replace tapes in the surveillance camera after a warrant to search the office had

**“The court found that the officers did not have a reasonable expectation of privacy in the use of the paging system.”**

been obtained. The warrant, however, was not executed until the fourth entry into the office. At this time, numerous personal and business items were taken belonging to the NBI officer and the DEA agent, who were subsequently convicted of conducting illegal wire-tapping.

The Ninth Circuit Court of Appeals found no Fourth Amendment violation in the warrantless search of the private office. However, the court concluded that the admission into evidence of the warrantless videotape of both the state officer and DEA agent violated the Fourth Amendment. The

court determined that the initial search of the office was governed by the reasonableness standard of the Fourth Amendment because the DEA was acting in the capacity of an "employer" investigating an allegation of employee misconduct. Although the NBI officer was not a DEA employee, he was a part of the "informal task force," and his office was "part of the workplace that was within the control of the DEA." Also, the office was the only location where a pen register could be operated within the workplace because the phone lines terminated there.

However, the two subsequent entries into the NBI officer's office to retrieve videotapes were found by the court to be a violation of the Fourth Amendment. The reasonableness standard no longer applied because the investigation had changed from one involving employee misconduct to one involving criminal conduct. The search warrant obtained prior to these entries clearly shows the change in the character of the investigation. Another factor was that an agent who was not part of the initial internal investigation was called in to uncover criminal conduct. Whenever the nature of an investigation turns from administrative to criminal—generally at the point probable cause is established—Fourth Amendment protections arise, and a warrant based on probable cause is necessary.

### **Electronic Communications**

Today's office landscape is crowded with such technological advances as alphanumeric pagers,

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computers, and e-mail. It is crucial that departments acknowledge the privacy issues inherent in the daily use of such technologies. Under the Electronic Communications Privacy Act, which protects e-mail messages from interception and disclosure to third parties, three primary exceptions exist: 1) interception is allowed if one party either expressly or implicitly consents to the communication; 2) providers of electronic communications services may monitor the lines to ensure adequate service; and 3) interception may be done in the interceptor's ordinary course of business.<sup>12</sup>

In *Bohach v. City of Reno*,<sup>13</sup> a federal district court addressed privacy issues relating to an "alpha-page" system, which is similar to an e-mail system. *Bohach* involved a police department that had implemented a computer program that would allow the transmission of brief alphanumeric messages to pagers with visual display capability. The same computer system recorded and stored the messages. Two officers complained that their right to privacy and federal wiretapping statutes had been violated by the department's storage of certain "private" messages and sought an injunction to halt the investigation into their alleged misuse of the department's paging system.

The court found that the officers did not have a reasonable expectation of privacy in the use of the paging system. The department in this case had notified all of the users of the system that their messages would be "logged on the network" and that certain types of messages would be banned from the system,

such as those violating the department's antidiscrimination policy. The system was set up so that anyone could access it. There was no password or clearance required. The court also noted that police departments often record all incoming and outgoing phone calls for various purposes and that pagers could be treated similarly. For these reasons, the court found that the officers should not have believed that they had a privacy interest in such communications.

In regard to the alleged federal wiretap statute violation, the court found that no "interception" had occurred because the messages were "electronic communications" instead of the "wire" or "oral communications" that would fall under the wiretap statutes.<sup>14</sup> Also, no actual "tapping" or "cloning" had occurred, merely the retrieval of stored messages by the "employer," who was also the "provider" of the service. The court explained that providers can do as they wish with



respect to the access to messages stored on their systems. Thus, the federal statutes distinguish “interception” of an electronic communication at the time of transmission from the retrieval of communications after they have been stored electronically.<sup>15</sup>

Although employers generally may monitor officers’ e-mail or computers where the department has provided the service or equipment, some factors may affect officers’ reasonable expectations of privacy. For instance, if officers have private passwords or have been assured by the department that their e-mail or computers will not be monitored, officers may have reasonable expectations of privacy that are sufficient to impede the department’s access.

### **Departmental Decisions and Privacy Expectations**

The Supreme Court has given three examples of legitimate work-related reasons for employers to search employee work space: 1) The need for correspondence or a file or report available only in an employee’s office while the employee is away from the office; 2) the need to safeguard or identify state property or records in an office in connection with a pending investigation into suspected employee misfeasance; and 3) a routine inventory conducted for the purpose of securing government property. Otherwise, a search may be based on departmental regulations or policies that provide notice to officers that their work space is subject to search without prior notice or other work-related justification.

If there is no clear policy, then the department may need a reasonable suspicion that officer misconduct exists in order to allow a warrantless administrative search. A policy alone may not be sufficient if the department has not put the policy into practice through periodic inspections. A lack of inspections may create a reasonable expectation of privacy for the employee in the work space that otherwise would not have existed.

**“Employers should adopt formal workplace privacy policies and provide employees with clear guidelines....”**

A department may dispel expectations of privacy if it maintains open work spaces, offices without doors, or doors with duplicate keys. Personal items such as purses, briefcases, or coats in such spaces may not be included in the definition of work space and would likely require a warrant to search except in cases involving exigent circumstances.<sup>16</sup>

A specific monitoring policy should be enacted in regard to cell phones, pagers, e-mail, and computers. For computers, notice of inspection and monitoring may be included on the screen as a user

logs on to the system. Departments should install superseding passwords allowing management access to “private” files despite any private passwords installed by officers.

### **Conclusion**

As police departments strive to keep pace with the tremendous advancements in technology and electronic communications, they also must keep abreast of the privacy issues these advancements may present. Employers should adopt formal workplace privacy policies and provide employees with clear guidelines regarding what they, and others, are authorized to do with any work product or equipment used in the department. These policies should consider all aspects of the workplace from the desk drawer to e-mail to the police cruiser. ♦

### **Endnotes**

- <sup>1</sup> *Katz v. U.S.*, 389 U.S. 347 (1967).
- <sup>2</sup> *Garrity v. New Jersey*, 87 S. Ct. 616, 620 (1967).
- <sup>3</sup> 107 S. Ct. 1492 (1987).
- <sup>4</sup> *Id.* at 715-716.
- <sup>5</sup> *Id.* at 716.
- <sup>6</sup> *Id.*
- <sup>7</sup> *Id.* at 722.
- <sup>8</sup> *Id.*
- <sup>9</sup> 128 F.3d 481 (7th Cir. 1997).
- <sup>10</sup> *Id.* at 493.
- <sup>11</sup> 923 F.2d 665 (9th Cir.1991).
- <sup>12</sup> 18 U.S.C.A. Sec. 2511.
- <sup>13</sup> 932 F.Supp. 1232 (D. Nev. 1996).
- <sup>14</sup> *Id.* at Sec. 2510 (1,2,12,18).
- <sup>15</sup> *Id.* at Sec. 2701(c)(1).
- <sup>16</sup> *Id.* 3 at 716.

*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.



Lieutenant Stephan



Captain Smith



Patrolman Vernon

A bridge spanning the Ohio River was the scene of two separate suicide attempts that were averted by three brave officers of the Madison, Indiana, Police Department. On a cold winter night, Lieutenant Dan Stephan responded to a report of a person threatening to jump from the bridge. Arriving at the scene, Lieutenant Stephan observed three men lying on the bridge floor holding a woman by her

clothing, while she dangled about 150 feet over the Ohio River. As the woman began slipping out of her clothing, Lieutenant Stephan climbed over the bridge railing and stood on a gas pipeline that runs along the side of the bridge with no walkway underneath. With no time to wait for a rope or safety harness, Lieutenant Stephan grabbed on to the woman and pulled her to safety. Several months later, Captain Marvin Smith and Patrolman Mike Vernon responded to an early morning call concerning a man threatening to jump from the same bridge. Arriving at the scene, the officers discovered the man hanging onto the gas pipeline. At this time, other officers arrived and began trying to convince the man to climb back on to the bridge. After repeated attempts failed and the man seemed determined to commit suicide, Captain Smith climbed over the side of the bridge and onto the pipeline. As Captain Smith grabbed the man's arm, Patrolman Vernon climbed over the side to assist. Other officers dropped a rope to them, which they tied around the man in order to help the officers pull him to safety. With nothing but the pipeline to stand on, Lieutenant Stephan, Captain Smith, and Patrolman Vernon could have slipped and fallen nearly 150 feet into the river. However, their selfless and courageous actions proved successful and saved two lives.



Special Agent Proxmire

While on surveillance, Special Agent Joseph L. Proxmire of the Air Force Office of Special Investigations at the Charleston Air Force Base, South Carolina, observed two vehicles recklessly approaching his location at a high rate of speed. As the vehicles neared, he saw a passenger in one vehicle lean out of a window and fire a handgun at the second vehicle. After the two cars passed him, he contacted local authorities for assistance and pursued the shooter's vehicle for identification purposes. He observed the other vehicle stopped well away from the road, apparently because the driver had lost control. Agent Proxmire located the shooter's vehicle at a nearby residence, informed the local police, and returned to the first vehicle. He found the driver dead from a gunshot wound, apparently inflicted during the drive-by shooting. Agent Proxmire's astute observations and courageous actions resulted in the arrest of three individuals for murder and one for accessory after the fact for harboring fugitives, as well as the recovery of the murder weapon.

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## Patch Call



**The Smithsburg, Maryland, Police Department patch features the Maryland state seal, a bronze star, and a deer. The design reflects law enforcement, the community, and the local wildlife.**



**The patch of the Iowa Falls, Iowa, Police Department features a rising sun over the Iowa River, which runs through the heart of Iowa Falls. Also on the patch is a foot-traffic bridge, referred to as the Swinging Bridge, which dates back to 1897, and the Washington Avenue Bridge.**